

1 GIBSON, DUNN & CRUTCHER LLP
2 MARK A. PERRY (*pro hac vice*)
3 1050 Connecticut Avenue, N.W.
4 Washington, DC 11101
5 Telephone: 202.955.8500
6 mperry@gibsondunn.com

7 GIBSON, DUNN & CRUTCHER LLP
8 JEFFREY T. THOMAS (*pro hac vice*)
9 BLAINE H. EVANSON (*pro hac vice*)
10 JOSEPH A. GORMAN (*pro hac vice*)
11 CASEY J. MCCRACKEN (*pro hac vice*)
12 3161 Michelson Drive
13 Irvine, CA 92612-4412
14 Telephone: 949.451.3800
15 jtthomas@gibsondunn.com
bevanson@gibsondunn.com
jgorman@gibsondunn.com
cmccracken@gibsondunn.com

16 GIBSON, DUNN & CRUTCHER LLP
17 SAMUEL LIVERSIDGE (*pro hac vice*)
18 ERIC D. VANDEVELDE (*pro hac vice*)
19 333 South Grand Avenue
20 Los Angeles, CA 90071-3197
21 Telephone: 213.229.7000
22 sliversidge@gibsondunn.com
evandavelde@gibsondunn.com

23 *Attorneys for Defendant*
24 *Rimini Street, Inc.*

25 RIMINI STREET, INC.
26 DANIEL B. WINSLOW (*pro hac vice*)
27 6601 Koll Center Parkway, Suite 300
28 Pleasanton, CA 94566
Telephone: 925.264.7736
dwinslow@riministreet.com

RIMINI STREET, INC.
JOHN P. REILLY (*pro hac vice*)
3993 Howard Hughes Parkway, Suite 500
Las Vegas, NV 89169
Telephone: 336.908.6961
jreilly@riministreet.com

HOWARD & HOWARD ATTORNEYS PLLC
W. WEST ALLEN (Nevada Bar No. 5566)
3800 Howard Hughes Parkway, Suite 1000
Las Vegas, NV 89169
Telephone: 702.667.4843
wwa@h2law.com

29 ORACLE USA, INC., et al.

30 Plaintiffs,

31 v.

32 RIMINI STREET, INC., et al.,

33 Defendants.

34 CASE NO. 2:10-cv-00106-LRH-VCF

35 **NOTICE OF SUBMISSION OF
DEMONSTRATIVES**

36 **Hearing:**

Date: September 3, 2020
Time: 11:00 a.m.
Place: Video Conference

37 **PUBLIC REDACTED VERSION**

1 TO THE COURT AND ALL COUNSEL OF RECORD:

2 In light of COVID-19 concerns, the Court ordered that the status hearing set for today,
3 September 3, 2020, at 11:00 a.m., be conducted remotely via videoconference. Because
4 counsel will not be able to appear in-person, Defendant Rimini Street, Inc. hereby submits the
5 attached demonstrative exhibits in advance of the hearing.

6

7 Dated: September 3, 2020

8 GIBSON, DUNN & CRUTCHER LLP

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10 By: /s/ Eric D. Vandeveld
11 Eric D. Vandeveld

12 *Attorneys for Defendant
13 Rimini Street, Inc.*

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DEMONSTRATIVE #1**Demonstrative Timeline Regarding AFW TransferFiles and Related Discovery Issues**

#	Undisputed Fact/Event	Oracle's Position	Citation
1	AFW TransferFiles tool was designed and created in 2013.	<i>Undisputed by Oracle</i>	ECF No. 1374-2 (R. Frank Decl.) ¶ 4.
2	Rimini has used TransferFiles thousands of times since at least 2014.	<i>Undisputed by Oracle</i> <i>Confirmed by Oracle's Expert</i>	Christian B. Hicks, <i>Rimini II</i> , Supplemental Expert Report (June 8, 2018) ¶ 8.3.4 (discussing “over 36,000 files transferred using TransferFiles”). Barbara Frederiksen-Cross, <i>Rimini II</i> , Corrected Supplemental Report (June 19, 2018) ¶ 316 (“AFW records show that [a single Rimini file] was transmitted, using AFW function TransferFiles, on at least three thousand times [sic],” citing her Ex. DDDDD.1 (spreadsheet showing certain transfers spanning from 2014 to 2018)).
3	TransferFiles has worked the same way since its inception.	<i>Undisputed by Oracle</i>	ECF No. 1374-2 (R. Frank Decl.) ¶¶ 4–10, 12.
4	Rimini produced the source code for TransferFiles in 2015.	<i>Undisputed by Oracle</i>	ECF No. 1372-6 (E. Vandevelde Decl., Ex. A) (Dec. 23, 2015 Letter from Rimini counsel enclosing hard drive of AFW source code).

#	Undisputed Fact/Event	Oracle's Position	Citation
5	Multiple Oracle experts analyzed the AFW source code, and TransferFiles specifically, at least as early as June 2017 (more than three years ago).	<i>Undisputed by Oracle</i> <i>Confirmed by Oracle's Experts</i>	<p>June 1, 2017 – <i>Rimini II</i>, ECF No. 515 (C. Hicks Decl.) ¶¶ 3, 5 (“I have examined the technical … source code produced by Rimini Street, Inc. … In particular, I have examined the software known as Automation Framework ('AFW') and accompanying documents, produced by Rimini on September 12, 2014, and the source code produced on June 6, 2014, as well as additional versions of the software and updated database logs produced on July 21, 2016, March 24, 2017, and April 26, 2017.”).</p> <p>May 4, 2018 – <i>Rimini II</i>, Expert Report of Christian B. Hicks ¶¶ 6.2, 6.2.1.21 (discussing AFW TransferFilesProcess source code).</p> <p>June 19, 2018 – Barbara Frederiksen-Cross, <i>Rimini II</i>, Corrected Supplemental Report ¶ 332 (discussing TransferFiles).</p> <p>June 22, 2018 – ECF No. 1363-4 (BFC Decl., Ex. 3) at 14 (<i>Rimini II</i> Hicks Rebuttal Report)) (discussing TransferFiles code).</p>
6	TransferFiles does <i>not</i> delete the original file being transferred. After successfully running, <i>more</i> copies exist of the transferred file than existed before the tool was run.	<i>Undisputed by Oracle</i> <i>Confirmed by Oracle's Expert</i>	ECF No. 1363-2 (Post-Inj. Expert Report of Oracle's Expert, Barbara Frederiksen-Cross (“BFC”)) ¶ 385 (“[A]fter a successful FTP transfer, two copies of the original file exist, the original file itself and the new copy on the destination system.”).

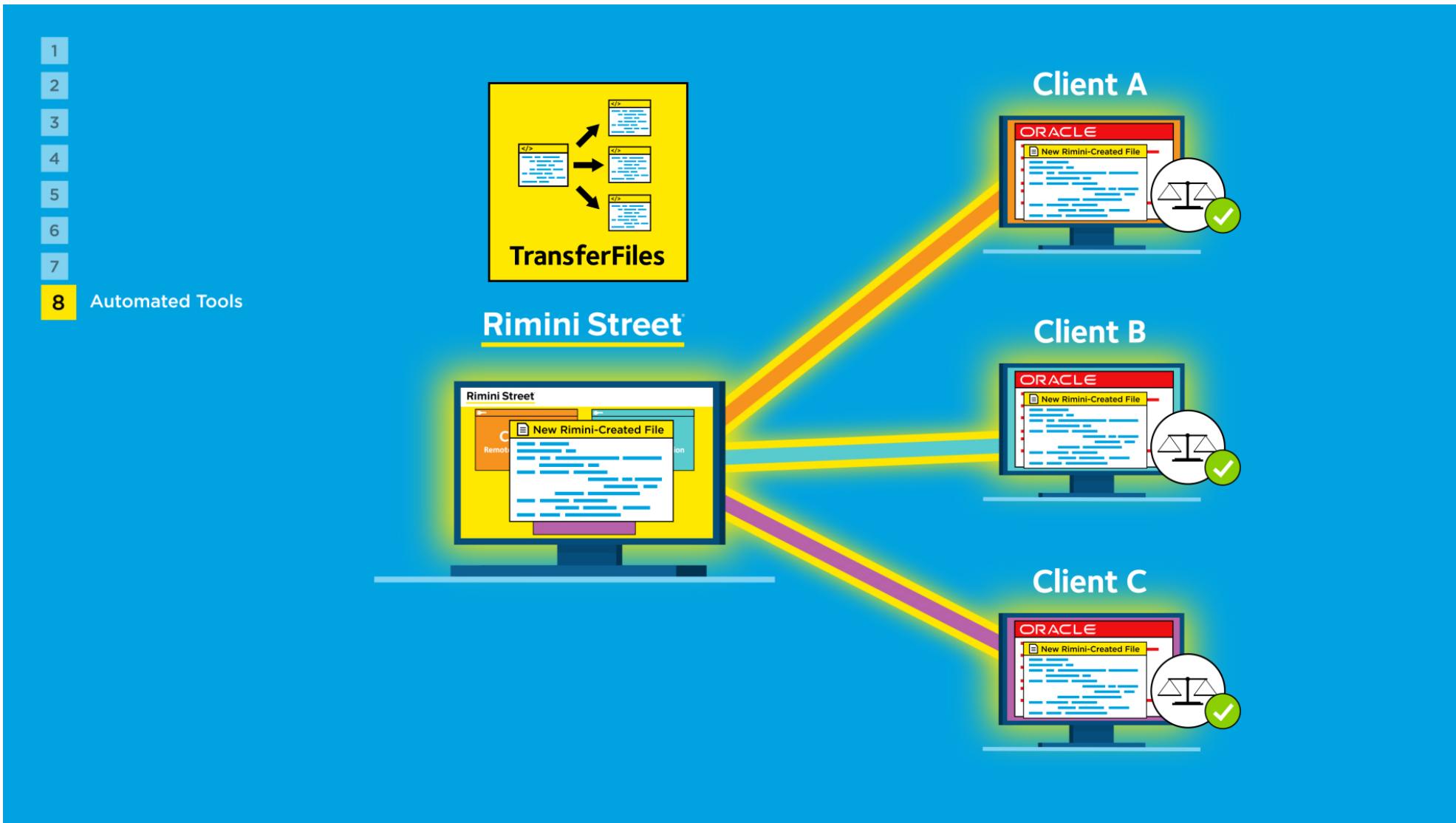
#	Undisputed Fact/Event	Oracle's Position	Citation
7	All TransferFiles transactions are logged.	<i>Undisputed by Oracle Confirmed by Oracle's Expert</i>	ECF No. 1363-2 (Post-Inj. Expert Report of Oracle's Expert, BFC) ¶ 131 (“Each time a file is distributed to a remote [client] environment, the AFW TransferFiles tool creates a corresponding record in the AFW database. The information includes the job number of the distribution set, the files transferred, the date and time of the transfer, the customer who received the file, the folder on the Rimini-hosted FTP server where the file was sent from, the folder on the remote [client] environment where the file was sent, and the Rimini user who performed the transfer.”).
8	On December 10, 2018, even though Oracle already had the source code and its experts had analyzed it, Rimini explained to Oracle exactly how TransferFiles worked and invited Oracle to discuss the matter further.	<i>Undisputed by Oracle</i>	ECF No. 1363-19 (S. Rodriguez Decl., Ex. K) (Dec. 10, 2018 Letter from Rimini counsel) (“Consistent with the design and purpose of the AFW FTP Process, materials do not remain in the AFW FTP folder locations once they have been successfully transferred to clients’ systems. However the transferred materials remain in their preexisting locations on Rimini’s systems.... Please let me know if you would like to discuss further.”).
9	<i>More than 8 months passed, with no response from Oracle</i>	<i>Undisputed by Oracle</i>	
10	On August 21, 2019, Oracle requested for the first time that Rimini change the TransferFiles tool so that intermediate copies are maintained.	<i>Undisputed by Oracle</i>	ECF No. 1363-23 (S. Rodriguez Decl., Ex. O) at 2 (Aug. 21, 2019 Letter from Oracle counsel) (“Oracle asks Rimini to immediately disable this deletion function.”).

#	Undisputed Fact/Event	Oracle's Position	Citation
11	Notably, exactly two years earlier, on August 21, 2017, Oracle previously acknowledged that Rimini's production of a single copy of each transferred file, along with a list of the clients that received each file, would be a "fair and proportional way for Rimini to satisfy its discovery obligations."	<i>Undisputed by Oracle (although Oracle disputes whether the situation was similar)</i>	ECF No. 1374-5 at 5–6 (Letter from Oracle) ("Rimini uses its Automated Framework program (AFW) to distribute materials between customers The file passes through Rimini's servers on the way to its destination, including via Rimini's FTP Server [A]s to responsive materials maintained on customer- or cloud-hosted systems and distributed through Rimini's systems: in lieu of Rimini seeking to produce copies of every single software patch, fix, and update from every customer- or cloud-hosted system to which they were distributed, Oracle would agree for Rimini to (1) produce one copy of each software patch, fix, and update that it developed for any of its customers for the relevant Oracle software product lines during the <i>Rimini II</i> discovery period, and (2) if the update was then distributed to multiple customers, identify in a verified discovery response each customer to whom Rimini distributed the patch, fix, or update.").")
12	Following Oracle's August 21, 2019 request, Rimini modified the TransferFiles tool, and tested and deployed it, by September 17, 2019.	<i>Undisputed by Oracle Confirmed by Oracle's Expert</i>	ECF No. 1374-2 (R. Frank Decl.) ¶ 14 (testifying that Mr. Frank redesigned the TransferFiles tool to create "a permanent archive copy of the intermediate file"). ECF No. 1374-9 (E. Vandevelde Decl., Ex. G) (Nov. 8, 2019 Email from Rimini counsel informing Oracle that "Rimini modified the relevant AFW programs on or about September 17, 2019, to archive transferred files into a single location where they can be more readily collected going forward"). ECF No. 1363-25 (Rodriguez Decl., Ex. Q) (Oct. 2, 2019 Email from Rimini counsel) ("The process change was implemented approximately two weeks ago", i.e., mid-September.). ECF No. 1363-1 (BFC Decl.) ¶ 24 (Ms. Frederiksen-Cross acknowledging that Rimini "implement[ed] its archiving process in September 2019").

#	Undisputed Fact/Event	Oracle's Position	Citation
13	Rimini produced 10,834 intermediate FTP files after the TransferFiles tool was modified.	<i>Undisputed by Oracle</i>	See Document Productions 17 and 38 (transmitted in letters that are Exhibits E and I to the Vandevelde Declaration).
14	Oracle has not cited a single intermediate file (of the 10,834 files total) that was not a duplicate of an original file that Rimini would have produced even if Rimini had never modified how TransferFiles works.	<i>Undisputed by Oracle</i>	ECF No. 1379 (Reply) at 8:17–21 (citing only the <i>final</i> version, and not any earlier, intermediate version of the file “HCM200929 Dev Instructions – [Final].txt”).
15	On September 23, 2019, Oracle sent Rimini a list of 466 files that it said were previously transferred and still not produced.	<i>Undisputed by Oracle</i>	ECF No. 1374-6 (Vandevelde Decl., Ex. C) at 5 (Sept. 23, 2019 Letter from Oracle counsel stating that “For ease of reference, we have attached a list of the specific files (including number of copies) we seek” and attaching a spreadsheet listing 466 files).
16	Rimini began producing such files. On November 26, 2019, Oracle noted Rimini’s progress, and sent a revised list noting that 78 files (of Oracle’s original list of 466, and additional, newly-created files) were outstanding.	<i>Undisputed by Oracle</i>	ECF No. 1363-21 (S. Rodriguez Decl., Ex. M) at 7 (Nov. 26. 2019 Letter from Oracle counsel referencing Exhibit C which identifies those 78 files).
17	On December 3, 2019, Rimini sent a letter to Oracle stating that it had completed its manual search, and provided a list showing that it produced 72 out of the 78 outstanding files (460 out of the original 466 files on Oracle’s list).	<i>Undisputed by Oracle</i>	ECF No. 1374-10 (E. Vandevelde Decl., Ex. H) at 7–8 (Dec. 3, 2019 Letter from Rimini counsel responding to Oracle’s Nov. 26, 2019 letter and attaching spreadsheet showing files from Oracle’s Exhibit C and their production).

#	Undisputed Fact/Event	Oracle's Position	Citation
18	<i>Eight months go by—Oracle does not send another letter on this issue, does not meet and confer further, does not ask Rimini or the Court about obtaining copies of the six files from the clients, does not move to compel.</i>	<i>Undisputed by Oracle</i>	
19	On July 10, 2020, Oracle files spoliation motion.	<i>Undisputed by Oracle.</i>	This is almost 5 years after Oracle had the TransferFiles source code, 2-3 years after its experts analyzed and wrote about it, almost 2 years after Rimini explained how the tool worked, and almost 1 year after Rimini modified the tool to accommodate Oracle's request.

Demonstrative #2



Sources: Benge Video,

Declaration of J. Benge (ECF No. 1385-2) at 14.

15:10-15:58 (also submitted on media, ECF No. 1393);